



**IN THE MATTER OF:**

**Complainant,**

**CHICAGO BAKING CO.,**

**Respondent.**

## RECOMMENDED ORDER AND DECISION

This matter comes on to be heard pursuant to Respondent's, Chicago Baking Company's (CBC) Motion to Dismiss. Complainant filed a Response and CBC filed a Reply. This matter is ready for decision.

### Statement of the Case

On July 29, 2000, Complainant filed a charge of discrimination with the Illinois Department of Human Rights (Department), alleging that Respondent issued him a written warning and later discharged him due to his race. On July 16, 2001, the Department filed a complaint, making the same allegations. On February 1, 2002, Respondent filed the present Motion to Dismiss.

### Contentions of the Parties

Respondent states that in June 2000, Complainant was given a written reprimand and subsequently discharged from CBC for leaving his shift early without authorization. Johnson filed a union grievance, which was taken to arbitration. On or about September 30, 2001, the arbitrator found that Johnson's discharge was without cause, pursuant to the collective bargaining agreement. The Arbitrator found that a seven-day suspension would have been appropriate discipline.

Based upon these findings, CBC was ordered to reinstate Complainant and pay him lost wages and benefits, except for the seven-day suspension period. CBC has complied with the arbitrator's award and reinstated Johnson to the same position he held prior to his termination, with seniority. CBC has also paid Complainant's lost wages and benefits from 2000 and 2001.

CBC argues that the Arbitrator granted Johnson the essential relief that he requested (reinstatement, lost wages and benefits), so the case at bar is moot and should be dismissed. Further, CBC argues that any relief granted by this tribunal would constitute double recovery for Johnson.

Complainant essentially agrees with the first two paragraphs above, but argues that the Arbitrator made no determinations as to whether the written reprimand was issued with cause or whether the written reprimand or discharge were because of Johnson's race. Also, Johnson further argues that he received no compensation for emotional distress. Therefore, the present complaint is not moot and the Respondent's motion should be denied.

### Findings of Fact

The following facts are based upon the record:

1. Prior to his termination, Respondent Chicago Baking Company (CBC) employed Complainant, Alvin Johnson.
2. In or about June 2000, Complainant was issued a written reprimand and subsequently discharged from CBC for leaving his post early without prior authorization.
3. Subsequently, Johnson filed a union grievance, which was taken to arbitration.
4. On or about September 30, 2001, the Arbitrator found that Johnson's discharge was without cause, pursuant to the collective bargaining agreement.
5. The Arbitrator found that a seven-day suspension would have been appropriate discipline. CBC was ordered to reinstate Complainant and pay him lost wages and benefits, except for the seven-day suspension period.
6. CBC complied with that order. Johnson was reinstated to the same position he held prior to his termination, with seniority. Also, Johnson was paid lost wages and benefits from 2000 and 2001.
7. Complainant filed a charge with the Illinois Department of Human Rights (Department) on July 11, 2001, which was perfected on July 29, 2001. The Department filed the present Complaint with the Commission on July 16, 2001.

### Conclusions of Law

1. The Commission has jurisdiction over the parties hereto and the subject matter herein.
2. Complainant is a person claiming to have been aggrieved by a violation of the Illinois Human Rights Act (Act).
3. Respondent is an "employer" within the meaning of the Act and subject to its provisions.

4. Respondent, by reinstating Complainant with seniority and providing him backpay and benefits, has given Complainant “full relief”, which requires the Commission to dismiss the Complainant herein pursuant to Section 8-105 (C ) of the Illinois Human Rights Act.

### Discussion

Under Section 8-105(C ) of the Act, the Commission shall dismiss a complaint and underlying charge(s) if a respondent has eliminated the effects of the alleged civil rights violation charged and taken steps to prevent repetition of the violation. In determining whether the respondent has eliminated the effects of the violation charged, the Act directs this tribunal to consider the extent to which the respondent has fully provided the relevant relief available to a complainant under 8A-104 of the Act. That section provides for relief such as actual damages, reinstatement, back pay, attorney’s fees, and prejudgment interest.

The fact that CBC reinstated Complainant and gave him backpay and benefits is unrefuted. Generally, this type of relief has been presumed to be compensation for a complainant’s losses. Smith and Cook County Sheriff’s Office, Cook County Department of Corrections, 19 Ill. HRC Rep. 131 (1985). However, Complainant argues, “Complainant’s damage for emotional distress and other relief requested must still be determined”. (*Complainant’s Response, at 3*).

Respondent has provided Complainant with the relevant relief available to Complainant pursuant to Section 8A-104 of the Act. Complainant was granted backpay, benefits, and reinstatement with seniority. This is the relief that he would have received if this tribunal had ruled in his favor on both counts of the complaint.

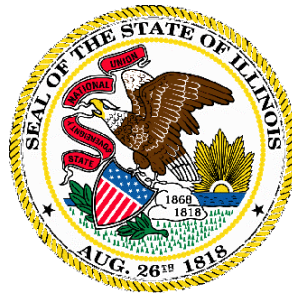
Emotional damages can be awarded if the backpay award did not compensate complainant for his actual damages, and if such an award would be appropriate in light of the nature and duration of the suffering experienced by the complainant. *See, e.g., Wong and Kraft, Inc.*, Ill. HRC Rep (1987CF0180, April 24, 1994), *Joyner and Illinois Power Co.*, 1997 ILHUM LEXIS 791 (October 22, 1997). In his Response, besides arguing that he is entitled to emotional damages, Complainant has provided absolutely no basis to establish that he actually sustained emotional harm and thus is entitled to such an award. Johnson has provided neither subjective nor objective evidence that the alleged civil rights violation caused embarrassment or humiliation, and therefore he has not established that the Arbitrator did not provide full relief. So, Johnson has not established a right to recover emotional damages. The same is true of “other relief” to which Complainant alludes. *Nichols and Boyd A. Jarrell & Co., Inc.*, 14 Ill. HRC Rep. 149 (1984), *Goode and University of Illinois*, 1994 ILHUM LEXIS 707 (June 24, 1994).

The case at bar is similar to *Joyner and Illinois Power Co.*, 1997 ILHUM LEXIS 791 (October 22, 1997). In *Joyner*, respondent filed a motion to dismiss, asserting, that the complaint should be dismissed because, *inter alia*, the complainant had been reinstated and received backpay via an arbitration hearing. The Commission concluded that the reinstatement and backpay provided Joyner full relief, and the complaint was dismissed. Joyner did not file a response to the motion to dismiss, so essentially, as here, he failed to support his claim for emotional damages or any other type of relief.

Recommendation

Based upon the reasons stated above, I recommend that the present complaint and underlying charge of discrimination against Chicago Baking Company be dismissed with prejudice.

HUMAN RIGHTS COMMISSION



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BY:

WILLIAM H. HALL, IV  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: November 7, 2003